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Published in:
Scots Law Times

Publication date:
2019

Document Version
Author accepted manuscript

Link to publication in ResearchOnline

Citation for published version (Harvard):
Russell, EJ 2019, 'The bystander and the bin lorry: Weddle v Glasgow City Council considered', *Scots Law Times*, vol. 2019, no. 31, pp. 117-125.

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Download date: 05. May. 2023

The bystander and the bin lorry: *Weddle v Glasgow City Council* considered

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The author considers the recent decision in Weddle v Glasgow City Council *[2019] SC EDIN 42. The case arose out of the tragic events in central Glasgow on 22 December 2014 when a bin lorry ran out of control, resulting in several fatalities. The pursuer, who had been in the vicinity at the time, raised an action in which she sought damages in respect of psychiatric injury from the employer of the bin lorry driver. That action would ultimately fail owing to the pursuer's inability to demonstrate that she was a primary victim. This article seeks to review the relevant law on psychiatric injury and to examine the court's reasoning in* Weddle*.*

Introduction

At one time, the law did not recognise claims for "pure" mental harm (i.e. mental harm unaccompanied by any actual physical injury) -see *Victorian Railways Commissioners v. Coultas* (1888) 13 App.Cas. 222. It is clear, however, that in the modern law of delict, the infliction of pure mental harm may constitute an actionable wrong-see *Dulieu v White & Sons* [1901] 2 K.B. 669. Such cases may however involve "elements of greater subtlety than in the case of an ordinary physical injury, and these elements may give rise to debate as to the precise scope of legal liability" (per Lord Macmillan in *Bourhill v Young* 1942 S.C. (HL) 78 at p.87). Indeed, cases involving mental harm or psychiatric injury are tightly controlled by the courts for policy reasons. The courts are fearful of the floodgates opening and indeterminate liability arising, a fear given voice by Cardozo C.J. in *Ultramares Corporation v Touche* (1931) 255 N.Y. 170 at p.179 where he warned of "liability in an indeterminate amount for an indeterminate time to an indeterminate class."
The issue of legal liability in respect of psychiatric injury was the focus of attention in the All-Scotland Sheriff Personal Injury Court in the recent case of *Weddle v Glasgow City Council* [2019] SC EDIN 42. Before examining that case in detail, however, it is appropriate first to make a few preliminary observations.

Terminology

In this area of law, older authorities often employed the terminology of “nervous shock.” The modern authorities, however, tend to favour the terminology of “psychiatric injury.” Both of these labels are used interchangeably with the term “mental harm” in this article.

The first hurdle-a recognisable psychiatric injury

A pursuer seeking damages for nervous shock or mental harm must demonstrate that he or she is suffering from a recognisable psychiatric injury. In *McLoughlin v O’Brian* [1983] 1 A.C. 410, Lord Bridge of Harwich stated the position as follows (at p.431):

> “the first hurdle which a plaintiff claiming damages of the kind in question must surmount is to establish that he is suffering, not merely grief, distress or any other normal emotion, but a positive psychiatric illness.”

Crossing this hurdle would not be an impediment for the pursuer in *Weddle* (as will be seen below) as it was not in dispute that she was suffering from post traumatic stress disorder.

The psychiatric injury must be induced by shock

The psychiatric injury of which the pursuer complains must be induced by shock, namely “the sudden appreciation by sight or sound of a horrifying event, which violently agitates the mind” (per Lord Ackner in *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 A.C. 310 at p.401). Psychiatric illness resulting from more gradual assaults on the nervous system (e.g. such as the stress and strain of caring for a spouse who has been wrongfully injured) will not found an action.

Primary and Secondary Victims-the distinction

In the context of psychiatric injury, the distinction between primary and secondary victims is crucial. In one of the leading modern authorities on nervous shock, *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 A.C. 310, Lord Oliver (at p.407) said:

“Broadly [the cases] divide into two categories, that is to say, those cases in which the injured plaintiff was involved, either mediately or immediately, as a participant, and those in which the plaintiff was no more than the passive and unwilling witness of injury caused to others.”

Pursuers or claimants in the first category of cases are known as primary victims whereas those in the second category are known as secondary victims. Accordingly, “the classification of all nervous shock cases under the same head may be misleading” (per Lord Lloyd in *Page v Smith* [1996] A.C. 155 at p.184). It would be wrong to assume that, owing to the “similarity of the medium through which the injury is sustained-that of an assault upon the nervous system,” a single common test applies to the duty of care enquiry, a point stressed by Lord Oliver in *Alcock* (at p.407.) It is therefore essential to determine whether the pursuer is a primary or secondary victim as the categorization of the victim will determine the appropriate test to be applied to the duty of care analysis.

Primary Victims

Primary victims include those who have been personally involved in the accident out of which the action arises. This will include those who have been personally threatened with bodily injury. In *Dulieu v White & Sons* [1901] 2 K.B. 669, the plaintiff’s psychiatric injury resulted from fear for her own safety when a horse-drawn van was driven into the public house in which she was working. Also found within this category, according to Lord Oliver in *Alcock,* are those who come to the aid of others who have been injured or threatened. (See *Chadwick v British Railways Board* [1967] 1 W.L.R. 912 where psychiatric illness was caused to an individual through the traumatic effects of coming to the aid of victims of the Lewisham railway disaster.) (It is worth noting, that, in that case, the railway carriage which the plaintiff had entered was at risk of collapse and so there was an element of personal danger to the plaintiff. In light of post *Alcock* developments the “personal danger” analysis would now be the preferred one.) The “primary victim” category also includes those who, through the negligence of others, have suffered shock by being put in the position of believing that they have been the involuntary cause of another’s death or injury. This was the case in *Dooley v Cammell Laird & Co Ltd* [1951] 1 Lloyd’s Rep 271. The plaintiff was operating a crane when its sling broke causing its load to plummet into the hold of a

ship in which men were working. The plaintiff was therefore intimately involved in the accident (although he was not responsible for it).

The leading modern authority on primary victims who suffer nervous shock is *Page v Smith* [1996] A.C. 155. There, while driving along the highway, the plaintiff was involved in a collision when a car, driven by the defendant, suddenly drove across his path. The plaintiff suffered no physical injury but claimed that, as a result of being involved in the accident, he suffered a recrudescence of chronic fatigue syndrome from which he had previously suffered, and which become chronic and permanent as a consequence of the accident. Lord Lloyd, who gave the leading speech, described the plaintiff as a primary victim because he was a participant. “He was himself directly involved in the accident, and well within the range of foreseeable physical injury” ([1996] A.C. 155 at p.184). The House of Lords held that, in the case of a primary victim, foreseeability of *physical* injury alone was sufficient to enable recovery in respect of psychiatric injury. Lord Lloyd stated ([1996] A.C. 155 at p.190) that “[i]t was unnecessary to ask, as a separate question, whether the defendant should reasonably have foreseen injury by shock.” Moreover, it was irrelevant that the plaintiff did not suffer any external physical injury.
As will be seen below, the pursuer in *Weddle v Glasgow City Council* was claiming to be a primary victim, although the court, following a careful review of the evidence, declined to categorise her as such.

Secondary victims

In *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 A.C. 310, Lord Oliver stated (at pp.408-9): “In those cases in which…the injury complained of is attributable to the grief and distress of witnessing the misfortune of another person in an event by which the plaintiff is not personally threatened or in which he is not directly involved as an actor, the analysis becomes more complex.” Indeed, it will be seen that stringent control mechanisms are applied to such secondary victim cases in order to avoid virtually limitless liability.

A convenient starting place for the discussion of secondary victims is the well known Scottish case of *Bourhill v Young* 1942 S.C. (H.L.) 78; 1943 S.L.T. 105. There, a speeding motorcyclist was

killed following a collision with another vehicle. The pursuer, who had alighted from a nearby tramcar, heard the collision but did not see it. She was positioned on the far side of the tramcar, some 45-50 feet from the point of impact. She later saw blood on the road. She sought damages for nervous shock from the executor of the deceased motorcyclist but the House of Lords held that the motorcyclist owed her no duty of care. Lord Russell of Killowen pointed out (at p.85) that "[t]he appellant was not in any way physically involved in the collision...The front part of the tramway-car was between her and the colliding vehicles. She was frightened by the noise of the collision, but she had no reasonable fear of immediate bodily injury to herself."

Lord Porter observed (at p.98*)*:

> *"*It is not every emotional disturbance or every shock which should have been foreseen. The driver of a car or vehicle, even though careless, is entitled to assume that the ordinary frequenter of the streets has sufficient fortitude to endure such incidents as may from time to time be expected to occur in them, including the noise of a collision and the sight of injury to others, and is not to be considered negligent towards one who does not possess the customary phlegm."

In *Bourhill*, as Lord Killowen observed, the pursuer was not herself in personal jeopardy. She was not a primary victim. She was, to borrow Lord Oliver's words in *Alcock*, a "passive and unwilling witness of injury caused to others" (i.e. a secondary victim). Injury to her by shock was not reasonably foreseeable to the motorcyclist and, accordingly, Mrs Bourhill failed to recover.

It is now clear, however, that in limited circumstances, a secondary victim suffering psychiatric injury may recover damages from the wrongdoer. *McLoughlin v O'Brian* [1983] 1 A.C. 410 was a significant milestone in the development of the law. There, the plaintiff's husband and three of her children were involved in a road traffic collision with a lorry. The plaintiff was at home two miles away at the time. A neighbour told her of the accident an hour or so later and took her to the hospital where she learned that her youngest child had been killed. She saw her injured husband and two injured children in a distressed state and still covered in mud, grime and oil. The plaintiff sought damages alleging that the impact of what she heard and saw caused her severe shock. In the

House of Lords, Lord Wilberforce identified “the critical question” (at pp.417-8) as “whether…one who was not present at the scene of grievous injuries to her family but who comes upon those injuries at an interval of time and space, can recover damages for nervous shock.” On the facts in *McLoughlin,* that question was answered in the affirmative. The plaintiff was the wife and mother of the injured and deceased parties and had witnessed the immediate aftermath of the accident with her own eyes. Lord Wilberforce set out (at pp.422-3) the control mechanisms which applied to such claims (all of which were satisfied in the *McLoughlin* case):

> “It is necessary to consider three elements inherent in any claim: the class of persons whose claims should be recognised; the proximity of such persons to the accident; and the means by which the shock is caused. As regards the class of persons, the possible range is between the closest of family ties - of parent and child, or husband and wife - and the ordinary bystander. Existing law recognises the claims of the first: it denies that of the second…As regards proximity to the accident, it is obvious that this must be close in both time and space...Experience has shown that to insist on direct and immediate sight or hearing would be impractical and unjust and that under what may be called the "aftermath" doctrine one who, from close proximity, comes very soon upon the scene should not be excluded…Lastly, as regards communication, there is no case in which the law has compensated shock brought about by communication by a third party…The shock must come through sight or hearing of the event or of its immediate aftermath. Whether some equivalent of sight or hearing, e.g. through simultaneous television, would suffice may have to be considered.”

The issue of simultaneous television broadcast would arise in the later case of *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 A.C. 310. The case arose as a result of the Hillsborough tragedy in 1989. The South Yorkshire Police Force was responsible for crowd control at a football match at the Hillsborough stadium but allowed too many intending spectators into part of the ground. A crush ensued and 95 people were killed. Over 400 others were physically injured. The plaintiffs were not themselves directly involved in the accident but had various relationships to those in the area of the crush. In other words, the

plaintiffs were secondary victims. They claimed damages for psychiatric illness. In none of the ten appeals to the House of Lords was the plaintiff successful. Their Lordships held that the tests of reasonable foreseeability and proximity must be satisfied before recovery could be permitted. It had to be reasonably foreseeable that a plaintiff would suffer psychiatric injury. This would only be the case where a close tie of love and affection existed between the plaintiff and the victim. Such a tie would be assumed in spousal and parent/child relationships, but would require proof in other cases.
In addition to foreseeability, two additional factors for proximity required to be satisfied - (1) proximity in terms of time and space and (2) direct perception (i.e. sight or hearing) of the event or its immediate aftermath.
As far as proximity in terms of time and space was concerned, identifying a dead brother-in-law eight hours after the accident could not be described as part of the *immediate* aftermath (see Lord Ackner, [1992] 1 A.C. 310 at p.405).
As for the need for direct perception, viewing live television footage of events at Hillsborough could not be equiparated with the viewer being within "sight or hearing of the event or of its immediate aftermath". Significantly, the television scenes did not depict suffering of recognisable individuals, as that was prevented by the broadcasting code of ethics, a position known to the defendant.

The litigation in *Bourhill*, *McLoughlin* and *Alcock* involved secondary victims of the various wrongdoers' negligence. All of those secondary victims claimed to have suffered nervous shock. In such claims, the House of Lords has made clear that, in addition to reasonable foreseeability of *psychiatric* injury, there are onerous requirements of proximity which must be satisfied. While Mrs McLoughlin was able to overcome those hurdles, the appellants in *Alcock* were unable to do so.

Weddle v Glasgow City Council

Attention is now turned to the case of *Weddle v Glasgow City Council* [2019] SC EDIN 42. The facts of the case were as follows. The pursuer, Danielle Weddle, was a student at the University of Stirling. On 22 December 2014, she travelled by train from Edinburgh to Glasgow's Queen Street Station. Upon exiting the station, she proceeded to the pedestrian crossing on West George

Street. While waiting to cross, she was looking at her mobile phone. The Millennium Hotel was to her left.

While she was standing there, a large bin lorry owned and operated by the defender and driven by its employee, Henry Clarke, mounted the west pavement of Queen Street and travelled along it striking a number of pedestrians, items and sign poles in its path. The bin lorry then rejoined the carriageway and continued to travel north on George Square. Near the junction of George Street and West George Street, the bin lorry struck several vehicles including a silver taxi which was stationary at the junction. The lorry then crossed the north carriageway of George Square pushing the silver taxi in front of it. Both vehicles were travelling at about 5 mph. The bin lorry mounted the north pavement and came to rest against the wall of the Millenium Hotel. Prior to the lorry‘s impact with the taxi, the pursuer was looking at her phone. The impact produced a loud bang, causing the pursuer to look up. At that point, the bin lorry was about 40m away from the pursuer. Both vehicles moved forward to a position about 32m away from her. The pursuer looked back at her phone and immediately back across towards the bin lorry and taxi. The bin lorry travelled roughly north east. The silver taxi travelled almost in a straight line from its starting position, smacked into a pillar and came to rest about 12m from where the pursuer was standing. At no stage was either the bin lorry or taxi coming directly towards the pursuer. At no stage was she at risk of being struck by either vehicle. The pursuer showed no physical reaction to what she had seen occur, a fact evident from the CCTV footage played in court. The pursuer saw the passenger and driver get out of the taxi. She thought it was simply a road accident and that everyone was unhurt. She proceeded on her way.

As the pursuer made her way along George Street, she saw a black car which was scraped and a family hugging each other. She then saw a girl on the ground. She related none of this to what she had just seen. A man was trying to pick the girl up and the pursuer soon realised that the girl was dead. On Queen Street, the pursuer heard a man on the phone talking about “lots of dead people”. She then saw a second body – a girl. There was white matter on the ground which looked like intestines. The pursuer telephoned her father and tried to explain what had happened. Her father’s impression was that she was suffering extreme distress. She confirmed that she was physically unhurt but said “there has been

a horrible accident". Her mother then telephoned the pursuer and persuaded her to go to a pharmacy. The pharmacy assistant, Mrs Wade, noticed that the pursuer was crying and trembling and seemed unable to calm down. The pursuer told Mrs Wade that she had seen an accident and that a girl had been knocked down and she had been very close to it. Mrs Wade arranged for the pursuer to see a doctor from a local practice and she was given Diazepam. Following these events, the pursuer suffered nightmares and psychological symptoms including intrusive thoughts, flashbacks, anxiety and depression. She consulted her GP and was referred for counselling. She was diagnosed as suffering from post traumatic stress disorder ("PTSD"). Her condition resulted in disruption to her lifestyle and university studies.

The pursuer sought damages for mental harm attributable to the incident described above. The case came before Sheriff McGowan for proof in the All-Scotland Sheriff Personal Injury Court. The defender, Glasgow City Council, admitted that the driver of the bin-lorry had been negligent and that it was vicariously responsible for his actions. The council did not dispute that the pursuer had suffered mental harm in the form of a recognised psychological injury. The issue between the parties was whether the pursuer was a primary victim. While the pursuer submitted that she was a primary victim, that characterisation was vigorously resisted by the defender.

Pursuer's submissions

The pursuer's case in *Weddle* was that she was a primary victim. Reference was made to *Campbell v North Lanarkshire Council and Another* 2000 SCLR 373. There, Lord Reed, following a review of the authorities, had explained that, as far as primary victims were concerned, it was essential to identify the range of foreseeable physical injury and that "[f]oreseeable injury in this context appears to mean potential physical injury or reasonable apprehension of such injury" (at pp. 380-381). In *Weddle*, the pursuer's position was that when she was waiting at the crossing and the accident unfolded before her eyes, she reasonably believed she was exposed to the danger of physical injury and reasonably believed she was in fear for her own safety. Her evidence at proof was that upon hearing the loud bang, she looked up to see the bin lorry travelling up Queen Street towards her. She felt as though it was

coming directly towards her. She then saw it propel a taxi along in front of it and thought she was going to be struck.

The difficulty with that evidence, however, was that during her counselling sessions, the pursuer did not mention that she had been in fear for her safety when she witnessed the collision between the bin lorry and the taxi. Moreover, in November 2017, when the pursuer was seen by Dr Morrison for the purposes of preparing a psychological report, she did not mention being in fear for her own safety. Nor, in 2018, when the pursuer was seen by Dr Jacqueline Scott, Consultant Psychiatrist, did she say to her that she had been in fear for her own safety when the collision occurred. In January 2019, Dr Morrison saw the pursuer again in order to prepare an up-to-date report. During that assessment, the pursuer told Dr Morrison that when she later considered the accident, she recalled being extremely worried that one of the vehicles would hit her and that she would be seriously injured or killed. When questioned as to why she had neglected to mention this in the first assessment, the pursuer stated that she was experiencing difficulties with guilt owing to the fact that she had survived the accident but had been unable to help the second girl.

The defender's submissions

The defender submitted that, if it was not reasonably foreseeable by Clarke that the pursuer could be physically injured by his actions, the pursuer's case must fail. The court should judge the *immediate* actions of Clarke, not the general build up. The immediate actions were that the bin lorry was driving in a direction away from the pursuer and not towards her. It was clear from the CCTV footage that no reasonable driver would think he was going to collide with the pursuer. The defender submitted that the perception of the pursuer herself was important here. If the pursuer was not herself actually terrified of physical injury, why should Clarke have been so cognisant? The defender submitted that the pursuer was not in fear for her own safety. The CCTV evidence disclosed that her actions were not indicative of someone in a state of terror. Other evidence pointed to the same conclusion: the pursuer did not mention fear to Dr Morrison at their first meeting; she failed to mention any such factor to her counsellors or GP; and when examined by Dr Scott, she did not mention being terrified to her. The defender submitted that the bin lorry driver would not have reasonably foreseen that his driving in the approach to the

junction would have given rise to the risk of physical injury to the pursuer. Accordingly, the pursuer did not qualify as a primary victim and was not entitled to obtain damages for any psychiatric injury suffered by her.

Judgment of the court

As far as his review of the evidence was concerned, Sheriff McGowan observed that the CCTV evidence indicated that neither the bin lorry nor the silver taxi was heading straight towards the pursuer. The bin lorry was moving away from her and the silver taxi was moving in more or less a straight line. Following the sound of the collision, the pursuer did not step back or show any other signs of agitation or fear. The pursuer's trauma after witnessing the events in George Square was spoken to by her father and the pharmacy assistant, Mrs Wade. Both witnesses gave evidence of their impression that the pursuer was in a state of fear. However, Sheriff McGowan's view was that the pursuer's report to her father was based on the *aftermath* of the accident and he concluded (at para.198) that "her emotional state was attributable to that, rather than the collision she had directly witnessed albeit allied with a realisation that both were linked; and that emotional state did not amount to fear of physical injury to herself arising at the time when she witnessed the collision." As for Mrs Wade's evidence, Sheriff McGowan found (at para.201) that it was "not reliable as to the pursuer's precise emotional state at that time or the reason for it." The pursuer was distressed and not reporting matters clearly. He stated (at para.202): "As with Mr Weddle, how was Mrs Wade to distinguish between fear and other strong emotional reactions, such as horror or shock?"

As for the pursuer's failure to mention fear in her first meeting with Dr Morrison and her attempted explanation therefor, Sheriff McGowan stated (at para.235):

"[T]o accept that the pursuer suffered fear of physical injury to herself in response to seeing the collision between the bin lorry and the silver taxi would involve not simply adding that detail to her account, but would entail a complete re-framing of her entire account."

Sheriff McGowan did not find the pursuer's explanation to be very clear about why she had not mentioned a feeling of terror to Dr Scott. He was unable to follow why feelings of guilt prevented her

from mentioning other feelings such as fear. He concluded (at para.241):

“In my view, the more likely explanation standing the other evidence in the case is that the pursuer has convinced herself looking back that she did experience fear for her physical safety when she saw the collision between the bin lorry and the silver taxi when in fact her reaction – which no doubt encompassed severe shock and anxiety – manifested itself only once she had witnessed the aftermath of the bin lorry’s progress north before it had come into her line of sight.”

Dr Morrison, in his evidence, seemed to support the pursuer’s explanation for failing to mention fear at their first meeting. The question arose as to whether the pursuer’s explanation for fear not being mentioned during the first assessment was sufficient to undermine the weight to be accorded to the first account. In Sheriff McGowan’s view it was not. He stated (at paras.259-260):

“First, I have already observed that the addition of fear or terror attributable to the bin lorry and silver taxi collision would involve not a simple addition to the first account recorded by Dr Morrison, but a complete re-writing of it. Second, Dr Morrison made important concessions under cross examination e.g. the original account was detailed; it could fairly be said to describe a delay in onset of an emotional reaction (distress) rather than an immediate one. Furthermore, the pursuer’s first account fits better with other evidence about accident circumstances, especially the CCTV footage.”

The pursuer’s evidence in court about the accident circumstances was to the effect that she heard a big bang and looked up from her phone. She said that she felt really scared and did not know if the taxi or the bin lorry was going to hit her. However, Sheriff McGowan formed the following view (at para.297):

“[A] combination of the CCTV footage and the terms of the agreed police report taken along with the pursuer’s evidence about distances demonstrates that the pursuer is in error in suggesting that either the bin lorry or the silver taxi was coming towards her or ever placed her in physical danger. “

As far as the applicable law was concerned, the parties were agreed that the question of whether someone could be categorised

as a primary victim was summarised in *Campbell*. Senior counsel for the pursuer submitted that the pursuer could be regarded as a primary victim if she could show that either she (a) was objectively exposed to danger or (b) reasonably believed she was exposed to danger. Senior counsel for the defender did not seek to dispute that. He submitted however that the point in time at which the bin lorry driver's actions should be judged was 'the immediate circumstances', i.e. when the pursuer was broadly in the vicinity of the bin lorry. Sheriff McGowan accepted the defender's submission stating (at para.301):

"The duty is owed to somebody who was placed in danger, or reasonably believed themselves to be so. In my view, that test could never be satisfied by somebody who was separated physically and temporally from the occurrence and effects of negligence. Put another way, the pursuer could only ever be a primary victim in relation to the negligence of Mr Clarke when the lorry was relatively near her."

It followed that the question of the extent of Clarke's duty, if any, towards the pursuer had to be determined by reference to events as witnessed by the pursuer as she stood at the pedestrian crossing outside Queen Street Station.

As far as duty of care was concerned, the first question to be answered was whether the pursuer was *actually at risk of physical injury* at the relevant time? This was a question of fact which fell to be determined by considering physical factors such as location, speed, distance and direction. It was clear from the CCTV footage that the pursuer only looked up when the bin lorry collided with the taxi. Beyond looking up and across, back down at her phone and then back across, she displayed no other physical response to what she saw. She did not step back, put her hand up to her face or react in any other way indicative of fear. Following his assessment of the evidence, Sheriff McGowan concluded (at paras.317-319):

"[I]t is clear that neither the bin lorry nor the silver taxi were moving fast. They were not heading towards [the pursuer]: if anything, their trajectory was away from her. They did not come very close to her. On no view could this be regarded as a 'near miss'. The point can perhaps best be evaluated by asking the hypothetical question: what would have happened if the physical barriers which the lorry

and taxi struck, bringing them to a halt, had not been there? The answer is that they would have carried on into the distance past the pursuer, causing no injury or danger of same to her. Accordingly, the question as to whether the pursuer was at risk of physical injury at the relevant time must be answered in the negative."

The next matter to be determined in terms of the duty of care analysis was whether the pursuer *reasonably believed she was at risk of physical injury* at the relevant time? Sheriff McGowan compared some cases which fell on either side of the line. In *Hegarty v EE Caledonia Ltd* [1996] 1 Lloyd's Rep 413 the plaintiff was employed as a painter on the 'Piper Alpha' oil platform which was owned and operated by the defendant. He was aboard a support vessel, the Tharos, on the night of certain explosions and fires on the Piper Alpha platform which resulted in many deaths. The support vessel moved close to the platform in an attempt to rescue survivors but retreated after a further explosion. There was no damage to the vessel and no one on board was physically injured. However, the plaintiff sued the defendant claiming that he was suffering from post-traumatic stress. It was held that at no time did the fire reach the vessel or cause any danger or damage to anybody or to the vessel itself. Although the plaintiff was genuinely in fear of his life and safety, that was not a reasonable fear. At no point was he ever closer to Piper Alpha than 100 metres. He failed to recover damages.

Dulieu v White & Sons [1901] 2 K.B. 669, on the other hand, was a case where the plaintiff, although not actually being in danger, reasonably thought that she was owing to the sudden and unexpected nature of the event. She was therefore entitled in principle to damages for nervous shock, if she could prove her allegations at trial.

Returning to Weddle's case, the starting point was that the pursuer was not in fact in danger of physical injury. Sheriff McGowan summarised the position as follows (at para.333):

"Neither the bin lorry nor the car was ever heading straight towards her. They did not come particularly close to her. The initial collision took place over 30m away (at least) from her. Thereafter, both vehicles were moving relatively slowly and came to rest at least 12m away from her. There was no explosion, fire or other such

risk... What she was aware of at that stage was of relatively small scale… It was a road accident involving a collision between two vehicles. At that stage, she did not see – and in my view was net yet aware of – any pedestrians being injured or worse. She saw people get out of the car, assumed they were okay and she left the vicinity. In my opinion, assuming that she did believe that she was in danger, I am not persuaded that that was a reasonable belief."

Sheriff McGowan held that no duty of care was owed to the pursuer as she had failed to prove that, at the relevant time, the bin lorry driver should have had her in contemplation as somebody who was at risk of injury.

Sheriff McGowan proceeded to point out that if the pursuer could not show that she was in fact in fear for her physical safety at the relevant time, her case could not succeed. As that issue on its own was potentially determinative of the case, he proceeded to give his views on it. The sheriff's findings were that at the relevant time, the pursuer did not see and was not aware of the earlier line of travel of or mayhem caused by the bin lorry. (The fact that, following the collision, the pursuer adopted her intended route south along George Square heading towards Queen Street reinforced the view that she was unaware of what had already happened.) Moreover, the collision took place a substantial distance from the pursuer, neither vehicle was ever "coming towards" her, the bin lorry and taxi were not moving very fast, they both came to a halt some distance from her and the pursuer showed no significant physical response to what she had seen. The accident circumstances and the pursuer's immediate reaction taken with what she said (and omitted to say) to Dr Morrison at their first meeting and the absence of any report of fear to her counsellors or Dr Scott contradicted her later assertions concerning fear. Indeed, on her own account to Dr Morrison, the pursuer's initial reaction was that the collision between the bin lorry and taxi was just a road accident. She suffered a realisation of growing horror as she moved along Queen Street. It was only as she pieced things together that she realised that something terrible had happened, probably involving the bin lorry. In the sheriff's view, neither Mr Weddell nor Mrs Wade was in a position to properly distinguish between fear and other emotional reactions such as anxiety and shock. He concluded (at para.349):

“Drawing all these threads together, I am satisfied that the pursuer did suffer PTSD – this was not in dispute. However, I am not satisfied that she was in fear of physical injury at the relevant time. If she did suffer fear at some stage, that was attributable to the horror of the aftermath of the incident and not to the terror of the accident involving the bin lorry and the silver taxi.”

He added (at para.377):

“In view of the conclusions I have reached, I make a finding in fact and law that the defender’s employee would not have reasonably foreseen that his driving at the relevant time would have given rise to the risk of physical injury to the pursuer; and in any event, that the pursuer did not in fact suffer fear of physical injury to herself at the relevant time; and that accordingly, the pursuer does not qualify as a primary victim and she cannot therefore obtain damages for any psychiatric injury suffered by her.”

Sheriff McGowan granted decree of absolvitor.

Concluding remarks

The pursuer in *Weddle* undoubtedly encountered ghastly scenes in the centre of Glasgow on 22 December 2014 and the court was in no doubt that she had suffered psychiatric illness as a result. While the pursuer’s case evokes sympathy, one must remain mindful of Lord Wilberforce’s observations in *McLoughlin v O’Brian* [1983] 1 A.C. 410 (at pp. 421-423) that “because 'shock' in its nature is capable of affecting so wide a range of people” there remains “a real need for the law to place some limitation upon the extent of admissible claims.”

In *Weddle*, the pursuer’s claim was ultimately considered not to be admissible. She was of course seeking to establish that she was a primary victim but she did not come within a measurable distance of achieving that. The court did not consider that she was at risk of physical injury or feared for her own safety.

It is interesting to note that the pursuer in *Weddle* presented no argument to the effect that recovery should be permitted as a secondary victim. As discussed above, a claim on the part of a secondary victim will only succeed in highly particular circumstances and presumably Ms Weddle’s advisers took the view that she would be unable to satisfy the control mechanisms set out in *Alcock*. There was nothing to suggest that she knew the

primary victims of the accident, let alone that she had a close tie of love and affection with any of them. It is therefore perhaps unsurprising that she attempted to advance a case based on the contention that she, herself, was a primary victim. Yet, the decision in *Weddle* ultimately demonstrates that cases advanced on a "primary victim" basis are not without their own difficulties. Unless such pursuers can demonstrate that they feared for their own safety-that they were in effect within the range of physical danger-then, failing some other active involvement in the incident (such as in *Dooley*), they will not recover.